

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0151
Controlled Substance Excise Tax
For the Tax Period 2004

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ISSUE

1. Controlled Substance Excise Tax: Imposition

Authority: IC 6-7-3-5. IC 6-8.1-5-1 (b), Hurst v. Department of Revenue, 721 N.E.2d 370 (Ind. Tax. 1999), Hall v. Department of Revenue, 720 N.E.2d 1287 (Ind. Tax 1999),

Taxpayer protests the imposition of the Controlled Substance Excise Tax.

Statement of Facts

Taxpayer was arrested for possession of marijuana on January 1, 2004. The county prosecutor sent the Indiana Department of Revenue (department) on March 1, 2005, a letter stating that the prosecutor would not press criminal charges concerning the possession of marijuana. The Indiana Department of Revenue issued a record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on March 9, 2000, in a base tax amount of \$20,039.95. Taxpayer filed a protest to the assessment. A hearing on the protest was held on July 14, 2005 and this Letter of Findings results.

Discussion

1. Controlled Substance Excise Tax: Imposition

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of marijuana in the State of Indiana. Indiana Department of Revenue assessments are presumed to be correct and Taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). Possession of the marijuana can be either actual or constructive. Hurst v. Department of Revenue, 721 N.E.2d 370 (Ind. Tax. 1999), Hall v. Department of Revenue, 720 N.E.2d 1287 (Ind. Tax 1999). Although both direct and circumstantial evidence may prove constructive possession, proof of presence in the vicinity of drugs, presence on property where drugs are located, or mere association with the possessor is not sufficient. Hurst at 374-375. To prove

constructive possession, there must be a showing that Taxpayer had not only the requisite intent but also the capability to maintain dominion and control over the substance. Hurst at 374.

In the Hall case, the Indiana Department of Revenue assessed Controlled Substance Excise Tax individually on a husband and wife. The couple owned and lived together in a residence. The marijuana was grown in a basement room with a locked door. Only the husband had a key to the room. Although the wife co-owned the house, lived in the house, did laundry in the room adjacent to the room which housed the marijuana and the smell of marijuana permeated the house; the Court found that the wife did not have the capability to maintain dominion and control over the marijuana. Therefore she did not constructively possess the marijuana and the Controlled Substance Excise Tax was improperly imposed against the wife.

Taxpayer contends that he did not possess the marijuana at issue in this case. He stated that his codefendant actually possessed the marijuana. He supports this contention by stating that he was not in the house when the police made the arrest. He further states that he had no knowledge of the presence of marijuana in his house.

In this case, the police searched the house owned by the taxpayer. They found marijuana in a green tote bag in the living room and in a kitchen drawer. Digital scales of the type often used to weigh marijuana were also found in the kitchen drawer with the marijuana. Other common indicia of drug trafficking such as large amounts of cash and guns were found in various areas of the house.

The presence of the marijuana and other indicia of marijuana trade throughout the taxpayer's house indicated that the taxpayer had the intent to possess the marijuana and the capability to maintain dominion and control over the marijuana. The taxpayer constructively possessed the marijuana. The tax was properly imposed.

Finding

The taxpayer's protest is denied.